IN THE

Supreme Court of the United States

October Term, 1975

No. 74-1427

REUBEN L. ANDERSON-CHERNE, INC.,
Appellant,

vs.

THE COMMISSIONER OF REVENUE
OF THE STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

BRIEF OF APPELLANT

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FACTS

This is an appeal from the decision of the Supreme Court of Minnesota made and entered on February 14, 1975 and reported in 226 N.W. 2d, Page 611. The Minnesota Reports citation is not yet available.

The decision appealed from is reported in full on Pages A-7 through A-14 of the Jurisdictional Statement.

The decision sustained the Order of the Tax Court of Minnesota entered on December 20, 1973 and this order is printed in full on Pages A-1 through A-6 of said Jurisdictional Statement.

The Appellant here was Appellant before the Tax Court and the Relater before the State Supreme Court.

The Appellant, a Minnesota corporation, during its tax years ending March 31, 1968, 1969 and 1970 received interest on United States securities in the following successive amounts: $23,179.00, $45,874.00 and $93,880.00.

It reported these receipts in its state tax returns filed pursuant to Minnesota Statutes 290.02. Appellant thereafter petitioned Appellee for the refund of the following respective sums: $2,512.85, $3,134.53 and $2,391.96, the dollar portion of the taxes paid for those respective years resulted from the inclusion in its taxable income of the interest received on the United States securities, asserting that the receipt of such income was not subject to taxation by the state. Appellee denied Appellant's request. The Tax Court and the Supreme Court of Minnesota sustained that position.

The tax imposed on Appellant and paid by it is measured, determined and computed solely upon the "taxable net income" of Appellant.

The Minnesota Statutes involved are as follows:

M.S.A. 290.02. An annual excise tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter.

M.S.A. 290.03. An annual tax for each taxable year computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commence, interstate commerce, or both; * * * * *;

M.S.A. 290.08. Subd. 1. The following items shall not be included in gross income, provided that the amount of any item which was excluded in arriving at gross income under the provisions of section 290.01, subdivision 20, shall not be again excluded under this section.

Subd. 7. Interest upon obligations of the State of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities.

Subd. 8. Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided, that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies, or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January, 1939; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities for taxable years ending prior to January 1, 1939, shall be excluded only to the extent that salaries, wages, commissions, fees and other compensation

received from the State of Minnesota, its political or governmental subdivisions, its municipalities, or its governmental agencies or instrumentalities for that year are excluded from gross income under the federal revenue acts; provided, that salaries, wages, fees, commissions, or other compensation received from the United States, its possessions, its agencies, or its instrumentalities by federal employees residing in "federal areas" shall be excluded from gross income for all taxable years ending prior to January 1, 1941.

Subd. 13. Subdivisions 4, 5, 10 and 11 shall not apply to corporations and subdivisions 7 and 8 shall not apply to corporations taxable under section 290.02 or under section 290.361.

The United States Constitution and 31 U.S.C.A. Section 742 are the federal laws involved.

U.S.C.A. 742. "Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other non-property taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes."

Under the constitution the United States has had granted to it certain specific powers including the power to finance its own operations and obligations.

By stipulation the parties agreed to the following facts:

"I.

"Appellant Reuben L. Anderson-Cherne, Inc. is a Minnesota corporation engaged in the business of mechanical contracting. Its principal office is in Minneapolis, Minnesota.

"II.

"During the fiscal year ended March 31, 1968, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $22,310.

"III.

"During the fiscal year ended March 31, 1969, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $45,874.

"IV.

"During the fiscal year ended March 31, 1970, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $93,880.

"V.

"Appellant filed tax returns with the Commissioner of Taxation of the State of Minnesota, pursuant to the provisions of Minn. St., Chapter 290, for each of its fiscal years ended March 31, 1968, March 31, 1969, and March 31, 1970. Copies of said returns are contained in the Commissioner of Taxation's Return filed with the Tax Court herein and are hereby incorporated herein by reference. The respective amounts of $22,310 for the 1968 taxable year, $45,874 for the 1969 taxable year, and $93,880 for the 1970 taxable year, as indicated in paragraphs II, III and IV above, were included in Appellants' taxable in-

come in its Minnesota tax returns for those respective taxable years.

"VI.

"Under date of June 4, 1971, Appellant filed claims for refund with respect to its taxable years ended March 31, 1968, March 31, 1969, and March 3, 1970, claiming that said amounts set forth in paragraphs II, III and IV above are not includible in taxable income under Minn. St., Chapter 290, and are exempt from taxation by the State of Minnesota under the provisions of Title 31, Sec. 742, U.S.C.A. as amended. * * *"

QUESTION

Does U.S.C.A. Title 31, Section 742 authorize the State of Minnesota to include interest received on U. S. securities in computing a tax imposed on a corporation under Section 290.02 Minnesota Statutes for the privilege of doing business as a corporation and which tax is computed solely on the income of the corporation?

ARGUMENT

It is accurate to state that prior to September 22, 1959 when 31 U.S.C.A., Section 742 was amended to read as it now does that interest income on U. S. securities was immune from direct taxation by any state:

Northwestern Mutual Life Insurance Company vs. State of Wisconsin, 275 U.S. 136, 48 S.Ct. 55, 72 L.ed. 202.
McCulloch vs. Maryland, 4 Wheat 316.
Home Savings Bank vs. Des Moines, 205 U.S. 503.

In the *Northwestern Mutual Life Insurance* case you stated in part as follows:

"It cannot be denied (and denial is not attempted) that bonds of the United States are beyond the taxing power of the states. Home Savings Bank vs. City of Des Moines, 205 U.S. 503, 509, 27 S. Ct. 571, 51 L. Ed. 901; Farmers & Mechanics Bank vs. Minnesota, 232 U.S. 516, 34 S. Ct. 354, 58 L. Ed. 706; and First National Bank vs. Anderson, 269 U.S. 341, 347, 46 S. Ct. 135, 70 L. Ed. 295. Certainly since Gillespie vs. Oklahoma, 257 U.S. 501, 505, 42 S. Ct. 171, 66 L. Ed. 338, it has been the settled doctrine here that where the principal is absolutely immune, no valid tax can be laid upon income arising therefrom. To tax this would amount practically to laying a burden on the exempted principal. Accordingly if the challenged act, whatever called, really imposes a direct charge upon interest derived from United States bonds, it is pro tanto void. * * *

"Here the statute undertook to impose a charge of 3 percent upon every dollar of interest received by the company from United States bonds. So much, in any event, the state took from these very receipts. This amounts, we think, to

an imposition upon the bonds themselves and goes beyond the power of the state."

It is also accurate to state that the tax imposed by M.S.A. 290.02 by whatever name it may be labeled, is a direct tax on the receipt of such interest income.

It is also true that prior to September 22, 1959 that this Court had sustained state tax laws which imposed franchise taxes on corporations where the taxes were based on the fair value of a corporation which included in its assets U. S. securities:

Raymond Bag Co. vs. Bowers, 163 Ohio St. 275, 126 N.E. 2d 321, 76 S.Ct. 648, 350 U.S. 1003, 100 L.ed. 866.

Werner Machine Co. vs. Director of Division of Taxation, Department of Treasurer, State of New Jersey "1956", 76 S.Ct. 534, 350 U.S. 492, 100 L.ed. 634.

You also sustained a franchise tax measured by income where said income included royalties received from U. S. copyrights:

Educational Film Corporation vs. Ward, 282 U.S. 379, 51 S.Ct. 170, 75 L.ed. 400.

Or where the franchise tax was measured by the income of the preceding year:

People ex rel. Bass, Ratcliff & Gretton vs. Tax Commission, 266 U.S. 271, 280.

Or where the corporate income included interest income from municipal bonds:

Flint vs. Stone, Tracy Co., 220 U.S. 107, 162.

Or where said tax was based upon income and included in the taxable income are proceeds from transportation in interstate commerce:

Maine vs. Grand Trunk Ry. Co., 142 U.S. 217.

The writer of this brief has found no decision of this Court which has sustained a direct tax by a state on the receipt of interest on United States securities. However, in the case of *Macallen Co. vs. Massachusetts*, 279 U.S. 620, 629, it appears that the State of Massachusetts attempted to impose a tax on interest income from United States bonds, and you held that it could not be done, citing in support of that decision *Northwestern Mutual Life Insurance Company vs. State of Wisconsin, supra*, and in doing so stated:

> "Let it once be conceded that such limitations may be evaded by the adoption of a delusive name to characterize the tax or form words to describe it and the destruction of the inviolability of these necessary safeguards will soon follow."

We come then to the basic and underlying question and that is: Did the Congress by the amendment of Section 742 remove the immunity from taxation by a state on interest income from United States securities?

If Section 742 as amended removed all immunity from such direct taxation, then Appellant should not be here.

If labeling the tax imposed an "excise tax" changes the tax from one imposed and computed solely on income to an "excise tax", in fact, there being no claim of or evidence of discrimination, then Appellant has no business taking the time of this Court.

Or if this Court feels compelled to accept the classification of "excise" placed on the tax by the legislature, although this Court from its own examination recognizes it as an income tax, in fact, Appellant should not be here.

But if the Court concludes that the tax, in fact, is an income tax and not a franchise tax and that the Court is not bound to accept the classification of "excise", then Appellant belongs here and it is entitled to the decree of this Court declaring the tax an income tax and ordering judgment for Appellant against Appellee for the refund of so much of the taxes it paid for the three years resulting from the inclusion in its taxable income of the interest it had received on the United States securities, unless the Court also concludes that the amended Section 742 permits and authorizes a state to impose a direct tax upon the interest income received from U. S. securities.

Respectfully submitted,

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